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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 438

JOHN MONTGOMERY, as Director of the STATE DEPARTMENT OF SOCIAL WELFARE, et al.,

Appellants,

vs.

FANNIE MAE BURNS, et al.,

Appellees.

Appeal from the United States District Court for the Northern District of California

Jurisdictional Statement

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Jurisdictional Statement

JURISDICTIONAL STATEMENT

Appellants John Montgomery, Director, California State Department of Social Welfare, Ronald Born, General Manager, San Francisco County Department of Social Services, Betty L. Presley, Director, Department of Public Social Services of Marin County, and Hrayr Terzian, Director, Alameda County Welfare Department, appeal from the interlocutory judgment of the specially constituted United States District Court for the Northern District of California. Appellants submit this statement to show that the Supreme Court of the United States has jurisdiction of the

appeal and that substantial constitutional questions are presented.

OPINION BELOW

No opinion was delivered by the court below. Copies of the Order Granting Preliminary Injunction including Findings of Fact and Conclusions of Law and copy of the Preliminary Injunction are attached hereto as Appendix A.

JURISDICTION

This suit was brought on behalf of appellees and all others similarly situated for injunctive and declaratory relief under the authority of Title 42 U.S. Code, section 1983 and Title 28 U.S. Code, sections 1343 (3) and (4), 2201 and 2202 to declare that the durational residence requirements in California Welfare & Institutions Code, sections 11252, 12050(b), 13550(b) and 17104 are in violation of the United States Constitution and to enjoin the appellants from enforcing said statutes against appellees and the class they represent on the ground that such statutes impair their rights under Article 1, section 8, clause 3 of the United States Constitution and the 14th Amendment to the United States Constitution.

The order of the court below granting the preliminary injunction and the preliminary injunction was entered April 19, 1968 and Notice of Appeal to this court was filed in that court on April 29, 1968.

The jurisdiction of the Supreme Court to review this interlocutory judgment by direct appeal is conferred by Title 28 United States Code, sections 1253 and 2101(b). The following decisions sustain the jurisdiction of the Supreme Court to review a judgment on direct appeal from a three-judge district court: *United States v. Georgia Pub. Serv. Comm'n.* 371 U.S. 285, 287 (1963); *Florida Lime and Avocado Growers, Inc. v. Jacobsen* 362 U.S. 73, 75-76 (1960).

STATUTES INVOLVED

California Welfare & Institutions Code sections 11252, 12050(b), 13550(b) and 17104 and the relevant portions of 42 U.S.C. §§ 302, 602, 1202 and 1352 are set forth in Appendix B hereto.

QUESTIONS PRESENTED

Do the California statutes requiring California residence of one year or more as a condition of eligibility for public assistance violate:

1. The constitutional right to travel freely from state to state.

2. The equal protection clause of the 14th Amendment to the United States Constitution.[1]

STATEMENT

Appellees are members of a class of residents of the State of California who would be eligible for public assistance but for the statutory residence requirements.

Appellee Fannie Mae Burns, her minor child and two minor grandchildren, moved to California in September, 1967 and have been residents of the City and County of San Francisco since that time, residing with a son and his family who are recipients of public assistance. In October 1967, Mrs. Burns applied for Aid to Families with Dependent Children. The application was denied because Mrs. Burns had not resided in California for one year. Welf. & Inst. Code sec. 11252.

Appellee Barbara Klein, aged 25 years, mother of a 20-month old child, has been a resident of Marin County, State

1. These are the grounds stated by the court below for preliminarily enjoining appellants from enforcing the statutes involved. Appendix A *infra*. Appellees alleged violation of Article 1, section 8, clause 3 of the United States Constitution. It is not clear from the Court's order if it determined that the constitutional right to travel is grounded on the commerce clause.

of California, since December 1967. Mrs. Klein separated from her husband prior to moving to California. She has been dependent on friends for her food and shelter and other means since arriving in California. On March 25, 1968, Mrs. Klein applied for Aid to Families with Dependent Children. This application was denied because Mrs. Klein had not resided in California for one year. Welf. & Inst. Code sec. 11252.

Appellee Sue Lee McPherson, age 76, at the request of her adult son, disposed of her possessions in Alabama and moved to San Francisco, California on March 15, 1967, to keep house for her son. The son forced her to leave his home and since that time has refused to care for or support her. On August 15, 1967, Mrs. McPherson, whose sole resources are Social Security payments of $52.00 per month and who has been subsisting with the help of friends, applied to the San Francisco Department of Social Services for Old Age Security. This application was denied because Mrs. McPherson had not resided in California for five years within the last nine years. Welf. & Inst. Code sec. 12050(b).

Appellee Maria Lourdes Barrios, mother of three children aged 15, 17 and 18 has resided in San Francisco, California, since May 1967. Mrs. Barrios receives $65.00 per month child support from her divorced husband. Mrs. Barrios was employed as a maid after coming to San Francisco but terminated the employment to be with her children. On September 20, 1967, she applied for financial assistance from the San Francisco County Department of Social Services. She was found presumptively eligible for an Aid to Families with Dependent Children grant of $199.00 per month. This was terminated on October 31, 1967, the county having ascertained that Mrs. Barrios had not resided in California for one year. Welf. & Inst. Code sec. 11252. In February of 1968 one of Mrs. Barrios' children became eligible for Aid to Families with Dependent Children be-

cause she had been here one year. Mrs. Barrios received on this child's behalf $148.00 per month.

None of the appellees were eligible for general assistance by reason of Welfare & Institutions Code section 17104 which requires three years' residence in California. California furnishes basic health care and related remedial or preventative services to persons "who would be eligible for Public Assistance but for the fact that they do not meet the durational residence requirements prescribed for Public Assistance." Welfare & Institutions Code section 14006.5(a). The City and County of San Francisco has in effect the Food Stamp Program, Title 7 U.S. Code sections 2011-25, for which there are no residence requirements for eligibility.

THE QUESTIONS ARE SUBSTANTIAL

I. Congress, Acting Within the Legitimate Scope of Its Power to Regulate Commerce, Has Authorized the States to Enact Durational Residence Restrictions as a Part of Their Public Assistance Programs.

The Social Security Act,[2] explicitly recognizing that conditions in the individual states may impose practical limitations upon public assistance programs, expressly authorizes the states to impose residence restrictions.

Title 42, U.S.C. section 301, in pertinent part, authorizes appropriations "for the purpose (a) of enabling each State, *as far as practicable under the conditions in such State,* to furnish financial assistance to aged needy individuals. . . ." (Emphasis added.) The statute provides further that the appropriations shall be used for making payments to states whose plans for old age assistance have been approved by the Secretary of Health, Education and Welfare. Section 302(a) sets out various conditions and 302(b)

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2. 49 Stat. 620 (1935), *as amended,* 42 U.S.C. §§ 301-1394 (1964), *as amended,* 42 U.S.C. §§ 301-1396(d) (Supp. I, 1965).

provides, *inter alia,* that "the Secretary shall approve any plan which fulfills the conditions specified in subsection (a) . . . except that he shall not approve any plan which imposes, as a condition of eligibility . . . (2) any residence requirement which . . . excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old age assistance and has resided therein continuously for one year immediately preceding the application. . . ."

Similar provisions may be found in the laws authorizing grants to States for aid to needy families with children (42 U.S.C. §§ 601, 602) (one year of residence), aid to the blind (42 U.S.C. §§ 1201-1202) (five of the past nine years), and aid to the disabled (42 U.S.C. §§ 1351, 1352) (five of the past nine years).[3]

When Congress acts in conjunction with coordinated action by the States, only those constitutional limitations ". . . designed to forbid action altogether by any power or combination of powers in our governmental system remain effective." *Prudential Ins. Co. v. Benjamin,* 328 U.S. 408, 434-35 (1946). This principle of congressional consent is firmly established by decisions of this Court. In the *Benjamin* case, *supra,* the Court found that Congress, by enacting the McCarran-Ferguson Act,[4] which authorizes the states to regulate and tax insurance companies, had impliedly determined that uniformity of regulation among the states was not required and that taxes which only affect foreign insurance companies are not discriminatory. The Court deferred to these congressional findings and upheld the state license tax on foreign insurance companies.

In *International Shoe Co. v. Washington,* 326 U.S.310

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3. The pertinent parts of the federal statutes are reproduced in Appendix B, *infra.*

4. 15 U.S.C. §§ 1011-1015 (1964).

(1945) this consent doctrine was applied to validate state taxation of non-resident businesses. The Court merely cited the Federal statute authorizing the states to impose the tax and stated: "It is no longer debatable that Congress, in the exercise of the commerce power, may authorize the States, in specified ways, to regulate interstate commerce or impose burdens upon it." 326 U.S. at 315.

Other cases holding that congressional consent is an adequate answer to a claim that a state statute violates the commerce clause include *Panhandle Eastern Pipe Line Co. v. Public Service Comm'n.*, 332 U.S. 507 (1947), and *Wilcox v. Richmond, Fredericksburg and Potomac R.R.*, 270 F.Supp. 454 (S.D.N.Y. 1967).

While appellants strenuously maintain the California durational residence rules impose no burden whatsoever upon interstate commerce, congressional power to authorize such rules is clear, and it is equally clear Congress has consented to the state action challenged by appellees.

II. California's Durational Residence Requirements Do Not Impose an Unlawful Burden Upon Interstate Travel.

The court below held, *inter alia*, that the residence requirements create a serious and substantial question of possible violation of the constitutional right to travel from state to state. The court did not elaborate further, but appellees' theory is that any state law is unconstitutional if it imposes for the traveller a burden or a disadvantage he would not experience in his home state. Although there is no evidence of record that the residence requirements in question do in fact have a "chilling"[5] effect on travel from state to state, the appellees have stressed their belief

5. See *Thompson v. Shapiro*, 270 F.Supp. 331, 334 (D. Conn. 1967), *prob. juris. noted*, 389 U.S. 1032 (1968).

that it is the intent and effect of the statutes to obstruct interstate migration of indigents. The court inferentially agreed that, even in the absence of any evidence on the point, it necessarily and logically follows that migration is significantly, and unlawfully, deterred. A number of substantial questions are raised by this conclusion: Is the conclusion proper in the total absence of material evidence? If so, is the alleged effect upon interstate travel really significant or is it de minimis? More significantly, can the supposed effect reasonably be considered a "burden" which is imposed by state law, or should it merely be classified as one of the many legally indistinguishable considerations which may influence one's decision to remove his residence to another state?

Conceivably every state law which is in some way different from the law of another state may have the effect of influencing a decision to move or not to move across state boundaries. Carrying appellees' theory to its logical conclusion would compel fully uniform state laws on every subject.[6]

The residence statutes[7] affect travel from state to state in exactly the same manner as do other laws, regulations,

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6. Harvith, *The Constitutionality of Residence Tests for General and Categorical Assistance Programs,* 54 Calif. L. Rev. 567, 593 (1966).

7. California, like other states, uses durational residence requirements to aid in the orderly administration of a wide variety of state functions. Voters (Elections Code § 14240), jurors (Code of Civil Procedure § 198), plaintiffs in divorce actions (Civil Code § 128), notaries public (Government Code § 8201) and the Governor of the State (Calif. Const. Art. V, § 3) are required to be residents of the state for specified periods of one year or more. University students are required to pay a non-resident fee unless they have resided in the state for one year prior to enrollment (Educ. Code § 23054).

practices or customs which vary from state to state.[8] If the residence rules are successfully challenged on the ground that they infringe upon the freedom of interstate movement, any state statute, and perhaps even private practices,[9] will be vulnerable to attack upon the same ground.

The allegation that the durational residence requirements create an unlawful classification is irrelevant to the question whether freedom of movement is restricted. On the other hand, if the classification is invidious, it is unnecessary to discuss the right to travel.

III. California's Recognized Policy of Continued Improvement of Its Already Superior Assistance Programs Is an Adequate Justification for the Residence Requirements.

The primary legislative purpose in enacting welfare legislation is to alleviate poverty within the state; it is not to encourage migration from other states. A progressive state legislature which wishes to enact social legislation for needy persons within its jurisdiction should recognize that the benefits to be offered, if more generous than those offered by other states, might have the incidental and unintended effect of encouraging non-residents to come to the state solely or primarily for the purpose of receiving such benefits.

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8. Examples of laws which might have a substantial effect upon a decision to move into a state are: income and inheritance taxes, professional and vocational licensing laws, rules governing admission to public schools and universities, requirements for obtaining a driver's license, and regulatory laws affecting businesses which an individual might wish to conduct.

9. California, unlike some states, permits union shop agreements under which a worker is required to join a union in order to obtain employment. Some private employers also utilize durational residence requirements in their hiring policies and California law does not forbid such requirements even for those businesses affected with a public interest.

If an assistance program brings additional needy persons into the state, it will tend to be self-defeating because available state resources will be diluted, at least so long as the individual states are required to administer and share in the financing of assistance programs as under the present system. A state which desires to provide adequately for its poor should not be required by federal law to abolish its residence requirements and thereby offer an incentive for migration from other states which are less generous.

California is recognized nationally as having the most progressive, generous and enlightened public assistance program of any state.[10] California's public assistance benefits are consistently among the highest in the nation.[11] The inevitable effect of the lower court's decision, if allowed to stand, would be to induce other states to hold their benefit payments at the present low levels, or perhaps even to reduce their payments, in order to encourage indigent persons to establish residence elsewhere.[12] The unavoidable result of such action by other states will be to frustrate California's efforts to upgrade its standards of assistance, and to tend to depress the average level of assistance both in California and nationally. It is no exaggeration to say that the ultimate social impact could be disastrous.

Perhaps the ideal social welfare system would provide uniform levels of benefits throughout the nation and abolish

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10. *See, e.g.*, Graham, *Public Assistance: The Right to Receive; The Obligation to Repay*, 43 N.Y.U. L.Rev. 451, 481 (1968).

11. U.S. Dept. of Health, Education and Welfare, *Social Security Bulletin, 1966 Annual Statistical Supplement*, p. 115; affidavit of John C. Montgomery dated July 5, 1968, p.2.

12. As a result of the lower court's order herein, other states have stopped paying benefits to their citizens who have recently come to California (Declaration of Ronald H. Born in Support of Motion for Stay of Preliminary Injunction, p.4, lines 7-13).

all residence restrictions, or would establish full federal financing of public assistance payments to new residents during the qualifying period. We do not have such a system, however, and the individual states such as California are helpless to change the present federal law.[13]

California wishes to continue providing benefits at the present levels, and to improve its programs if possible. In order to do so it must continue to utilize durational residence requirements until such time as all other states adopt enlightened policies comparable to those of California.[14]

IV. The Requirement of a Specific Minimum Period of Residence Prior to Receipt of Some Forms of Public Assistance Does Not Violate the Equal Protection Clause.

Appellees contended below that the California residence requirements create an arbitrary classification in violation of the equal protection clause of the Fourteenth Amendment. The three-judge court concluded that this argument created a serious and substantial issue of law, and by issuing the preliminary injunction, the court in effect ruled in favor of appellees on this question.[15]

Legislation inevitably requires the drawing of lines and the creation of classifications, and classification almost in-

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13. The California Legislature on May 7, 1968, formally urged the President and Congress to amend the Social Security Act so as to provide such federal participation. Assembly Joint Resolution No. 35 (May 7, 1968).

14. Efforts are also being made among the states to develop a broad system of interstate agreements for providing assistance to migrant welfare recipients.

15. The view that a preliminary injunction issues merely to preserve the status quo cannot apply here. The appellees, by the order, were granted funds from the state which they were not previously receiving nor entitled to receive. It would be naive to say that upon reversal there would be a "right" of recovery from the indigent appellees.

variably involves a degree of arbitrariness and inequity (*Atchison, Topeka & Santa Fe v. Matthews,* 174 U.S. 96, 106 [1899]). In the field of social legislation the individual who falls just outside the boundaries drawn by the legislature naturally may feel he has been treated unfairly, but this does not mean that every classification created by the legislature should be open to challenge on equal protection grounds.

The legislature, faced with the practical realities of obtaining revenues by taxing the protesting citizenry, allocating the available monetary resources to support a multitude of essential and beneficial services, and budgeting new programs to meet the new problems of a rapidly changing society, must be allowed a relatively wide area in which its determinations are conclusive upon the courts. The frequently cited guidelines set down by this Court in 1911 in *Lindsley v. Natural Carbonic Gas Co.,* 220 U.S. 61 (1911), are founded upon the still valid principle that under our system of government it is the legislative branch which determines the wisdom of, and the necessity for, laws which deal with economic problems and social conditions.[16]

The principles of the *Lindsley* decision, *supra,* are that:

> "1. [A classification is unconstitutional] . . . only when it is without *any* reasonable basis, and therefore is purely arbitrary. 2. A classification having *some* reasonable basis does not offend . . . merely because it is not made with mathematical nicety, or because in practice it results in some inequality. 3. . . . if *any* state of facts reasonably can be conceived that would sustain [a classification] . . . the existence of that state of facts . . . must be assumed. 4. One who assails the classification . . . must carry the burden of showing

16. See also *Griswold v. Connecticut,* 381 U.S. 479, 482 [1965]; *Ferguson v. Skrupa,* 372 U.S. 726, 729-730 [1963].

that it does not rest upon *any* reasonable basis, but is essentially arbitrary." (*Lindsley v. Nat. Carbonic Gas Co.*, 220 U.S. 61, 78-79 (1911). (Emphasis added.)

Unless the fundamental soundness of the foregoing principles is to be denied, appellees' cause must be rejected by reason of their failure to successfully assail the logical premises of the residence statutes. Of obvious concern to a state legislature faced with the task of budgeting massive aid programs,[17] such as aid to families with needy children or old age assistance, is the need for some degree of year-to-year predictability of expenditures. If the legislature makes the determination that the fiscal integrity of a given aid program requires protection against the possibility of a sudden and unexpected influx of new residents during the budget year, the courts should not substitute their judgment in the absence of clear and convincing evidence showing the legislative determination is in error. No such showing has been made, or even attempted, by the appellees or the court below.

Particularly in the field of old age assistance, California is vulnerable to large migrations of new residents. California is an attractive and desirable state for retirement. Under the present residence rule (five of the past nine years), it is not likely many people come for the purpose of receiving welfare benefits, but nonetheless many residents of other states come to California to retire.

If the residence restrictions were removed, California reasonably could expect a large influx of retired people who have made their contributions to the economies and cultures of other states and who realistically have little left to offer to California except their presence. Many such people whose families are grown and who no longer have jobs keeping

17. The 1968-69 California Budget Act, § 32.5 provides $450,635,200.00 for aid programs administered by the Department of Social Welfare.

them in their home states have little or no incentive to remain there, and could be expected to grasp the opportunity to take up residence in California if no economic sacrifice were involved or if a financial incentive were available. California certainly should not be required to provide a financial incentive for retired individuals to move from states having less generous old age benefits in order to carry out its policy of giving a reasonable retirement income to its own citizens who have contributed to the state's economy.

Appellees in their arguments below have repeatedly made the claim that the California residence requirements deprive new residents of the very necessities of life and literally force them to the brink of starvation. This claim must be tempered by the realistic recognition that the most serious consequence of the residence requirements is that one who is in need of public assistance may be required to seek it in his home state and thereby forego changing his place of residence. The relative inability to indulge a desire to remove one's residence to another state is not an insufferable burden and therefore does not require, from a constitutional standpoint, an overwhelming justification.

At least some, and perhaps all, of the present plaintiffs had resources available to them in their home states which they voluntarily abandoned (*see, e.g.* Affidavit of Sue Lee McPherson dated March 29, 1968). Virtually every newcomer to California who applies for public assistance and is temporarily barred by the residence rules would be eligible for aid in the state of his previous residence. This Court has said that each state is free to set its own standard of need (see *King v. Smith* ..... U.S. ....., 88 S. Ct. 2128, 2134 (1968). The California durational requirements may be justified, if further justification is required, as a "standard of need" measure which says in effect that one who has resources available in some other state and has

voluntarily chosen to forego such resources is not "in need" for purposes of public assistance.

CONCLUSION

The questions raised by the granting of a preliminary injunction against enforcement of California's durational residence requirements are substantial and should be resolved by this Court.

California does not favor residence statutes restricting eligibility for public assistance, but it respectfully urges that under existing circumstances and present federal law such statutes are essential to California's efforts to maintain and improve its enlightened welfare programs. The inevitable result of the lower court's order would be to encourage the reduction of benefits paid by the various states and to create an effective upper limit on benefits paid by progressive states such as California.

In a recent case dealing with the critical social problem of alcoholism, this Court recognized the inadequacy of existing legislation and expressed the concern that a ruling invalidating the existing practice of jailing indigent alcoholics would accomplish nothing to solve the social problem (*Powell v. Texas*, ... U.S. ...., 88 S.Ct. 2145, 2152 [1968]). In the present case, California respectfully urges the Court to recognize that, although the residence statutes may be somewhat at variance with the ideal concept of the perfect social welfare system, they serve a worthwhile purpose under the present system and should be retained until the federal law is changed or the states and local governments are able to develop feasible alternatives.

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(Appendices Follow)

Appendix A

Filed—Apr 19 1968
James P. Welsh, Clerk

In the United States District Court for the Northern District of California

Case No. 49018

Fannie Mae Burns, individually and on behalf of her minor child, Billy Joe Miles, and on behalf of her minor grandchildren, Angela Gray and Erick Gray and Barbara Klein, individually, and on behalf of her minor child, Alexei Roger Klein, and Sue Lee McPherson, and Maria Lourdes Barrios, individually, and on behalf of her minor children, Adolfo Barrios, and Marta Barrios, and on behalf of all other individuals similarly situated,

Plaintiffs,

vs.

John Montgomery, as Director of the State Department of Social Welfare, Ronald Born, as General Manager of the San Francisco Department of Social Services, and Betty L. Presley, Director of the Department of Public Social Services of Marin County,

Defendants.

ORDER GRANTING PRELIMINARY INJUNCTION

Before: Hamlin, U. S. Circuit Judge, and Zirpoli and Wollenberg, U. S. District Judges

This matter having come on for hearing on April 12, 1968 at 10:00 a.m., before a three judge court consisting of the Honorable Oliver D. Hamlin, Jr., Circuit Judge, the

Honorable Albert C. Wollenberg, and the Honorable Alfonso J. Zirpoli, District Judges convened pursuant to Title 28 U.S.C. 2281, on plaintiffs' motion for a preliminary injunction to enjoin defendants from enforcing California Welfare and Institutions Code sections 11252, 12050(b), 13550(b), 17104 and 17105; and the parties being represented by counsel; and the Court having considered the affidavits and memoranda presented and the arguments of counsel for all parties, and being fully advised in the premises, it makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff Fannie Mae Burns is a citizen of the United States of the age of 55 years. Plaintiff is the mother of one child and the custodian of two grandchildren. She has been a resident of the County of San Francisco, State of California, since September, 1967, and she intends to continue in such residence.

2. In October, 1967, plaintiff Burns applied to San Francisco County Welfare for aid; that her application for an Aid to Families with Dependent Children [hereinafter referred to as AFDC] grant was denied, and continues to be denied, solely for the reason that, although she is in all other respects qualified to receive assistance, she had not resided in the State of California for the period of one year as is required by the provisions of Section 11252 and 17104 of the California Welfare and Institutions Code.

3. Plaintiff Burns does not have funds with which to obtain proper and necessary food, clothing, housing, and medical and dental care for herself and children, and plaintiff is suffering and will suffer immediate, certain, and irreparable injury by reason of the denial of aid.

4. Plaintiff Barbara Klein is a citizen of the United States of the age of 25 years. She is the mother of a twenty-month old child. She has been a resident of Marin County, State of California, since December, 1967, and she intends to continue in such residence. Since arriving in California, she has been dependent on friends for shelter, food and other needs. She has been separated from her husband since her arrival in California.

5. On March 25, 1968, plaintiff Klein applied to the Welfare Department of Marin County for AFDC funds; that her application for AFDC funds was denied, and continues to be denied, solely for the reason that, although she is in all other respects qualified to receive assistance, she had not resided in the State of California for the period of one year as is required by the provisions of Section 11252 and 17104 of the California Welfare and Institutions Code.

6. Plaintiff Klein does not have funds with which to obtain proper and necessary food, clothing, housing and medical and dental care for herself and child, and plaintiff is suffering and will suffer immediate, certain, and irreparable injury by reason of the denial of such aid.

7. Plaintiff Sue Lee McPherson is a citizen of the United States of the age of 76 years. Plaintiff has been a resident of the County of San Francisco, State of California since March 15, 1967, and she intends to continue in such residence. Since arriving in California, plaintiff's son forced her to leave his home and has refused to care for or support her since then.

8. On August 15, 1967, plaintiff McPherson applied to the San Francisco Department of Welfare for old age assistance; that her aplication for aid was denied, and continues to be denied, solely for the reason that, although she is in all other respects qualified to receive assistance, she

had not resided in the State of California for the period of one year as is required by the provisions of Sections 12050 (b) and 17104 of the California Welfare and Institutions Code.

9. Plaintiff McPherson's sole resources are $52.00 per month Social Security payments, and plaintiff does not have the funds with which to obtain proper and necessary food, clothing, housing, and medical and dental care for herself, and plaintiff is suffering and will suffer immediate, certain, and irreparable injury by reason of the denial of old age assistance.

10. Plaintiff Maria Lourdes Barrios is a citizen of the United States and the mother of three children, aged 15, 17 and 18. She has been a resident of the County of San Francisco, State of California, since May, 1967, and intends to continue in such residence. Plaintiff found employment in California as a maid, but had to terminate such employment in order to keep her family together. At present, her children are receiving $65.00 per month from their father, whom their mother divorced in 1966.

11. On September 20, 1967, plaintiff Barrios applied for financial assistance from the San Francisco County Department of Social Services. She was found presumptively eligible for an Aid to Families with Dependent Children grant of $199.00 per month. On October 31, 1967, the AFDC grant was terminated solely and only for the reason that, although she and her children are in all other respects qualified to receive assistance, they had not resided in the State of California for the period of one year as is required by the provisions of Sections 11252 and 17104 of the California Welfare and Institutions Code. In February, 1968, one of this plaintiff's children became eligible for AFDC because the one-year residence requirement had been fulfilled by her; that her AFDC grant is $148.00 per month.

12. Plaintiff Barrios does not have funds with which to obtain proper and necessary food, clothing, housing, and medical and dental care for herself and children, and plaintiff is suffering and will suffer immediate, certain, and irreparable injury by reason of the denial of such aid.

13. Defendant John Montgomery, is the Director of the California Department of Social Welfare and is charged with state-wide administration of the categorical aid programs and with establishing rules and regulations to carry out the statutory provisions of said program. Defendant, Ronald Born, is General Manager of the San Francisco City and County Department of Social Services and is responsible for administration of the categorical aid and general assistance programs in the City and County of San Francisco, State of California. Defendant, Miss Betty L. Presley, is the Director of the Department of Public Social Services of Marin County and is responsible for administration of the categorical aid and general assistance programs in the County of Marin, State of California.

14. Plaintiffs have brought this action as a class action on behalf of themselves and all other persons who are entitled to public assistance but for the statutory residency requirements. The class is composed of those persons who otherwise meet the requirements for attaining public assistance except for the requirement of one year residence in the State of California. Those persons who compose this class will be irreparably injured by enforcement of the residence requirements. The class is so numerous that joinder of all members is impracticable. All members of the class are governed by the same California procedures and statutes. The representative parties herein will fairly and adequately protect the interest of the class. The defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate injunctive relief with respect to the class as a whole.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties to this action and over the subject matter of the action.

2. The facts found hereinabove raise serious and substantial questions regarding the constitutionality of the residence requirement provisions contained in sections 11252, 12050(b), 13550(b) and 17104 and 17105 of the California Welfare and Institutions Code in light of the equal protection clause of the Fourteenth Amendment and the constitutional right to freely travel from state to state, and the Court is at this time satisfied that plaintiffs are likely to prevail. *See, e.g., Thompson v. Shapiro,* 270 F.Supp. 331 (D.Conn. 1967), *probable jurisdiction noted,* 36 Law Week 3286 (1968).

3. This action is properly maintainable as a class action for the purpose of securing injunctive relief. Fed. Rul. Civ. Proc. 23(a), and 23(b) (2).

4. Plaintiffs and the class they represent will suffer immediate and irreparable harm if preliminary relief is withheld.

5. Plaintiffs and the class they represent are entitled to a preliminary injunction, in the form and substance hereinafter set forth.

PRELIMINARY INJUNCTION

On the 12th day of April, 1968, the plaintiffs' application for a preliminary injunction having come on regularly for hearing, and the Court having heard the evidence in the matter and made its Findings of Fact and Conclusions of Law as hereinabove stated:

IT IS ORDERED, ADJUDGED, AND DECREED THAT the defendants are preliminarily enjoined, pending the further order of this Court, from enforcing the provisions of sections 11252, 12050(b), 13550(b), and 17104 and 17105 of the California Welfare and Institutions Code, to the extent such statutes impose a residency requirement of at least one year as a condition of eligibility for public assistance upon plaintiffs and the class which plaintiffs represent, and from withholding public assistance from plaintiffs and members of the class which plaintiffs represent because of the residency provisions of said statutes.

Dated: April 17 1968

O. D. HAMLIN
United States Circuit Judge

ALBERT C. WOLLENBERG
United States District Judge

ALFONSO J. ZIRPOLI
United States District Judge

Appendix B

California Welfare and Institutions Code

§ 11252. Residence requirements. No child is eligible to receive aid unless he has residence in the state.

For the purposes of this chapter, a child who meets any of the following qualifications has residence in the state:

(a) If he has been physically present in the state for one year immediately preceding the date of application.

(b) If his parent or parents have resided in the state for the period of one year immediately preceding the date of application.

(c) If the parent or other relative with whom the child is living has resided in the state for the period of one year immediately preceding the birth of the child and the child was born within one year immediately preceding the date of application.

(d) If he is born in the state.

§ 12050. Persons entitled to [old-age assistance] aid; qualifications. Aid shall be granted under this chapter to any person who comes within all of the following descriptions:

(b) Who resides in the state and has so resided continuously for at least one year immediately preceding the date of application and for at least five years within the nine years immediately preceding the date of application; or, who resides in the state and is, or has been within one year prior to his application under this chapter, receiving aid to the blind or potentially self-supporting blind, to which he has become ineligible because of restoration of sight; provided, however, that if, when, and during such time as the federal government shall fix maximum residence requirements, aid shall be paid to any person, otherwise eligible, who meets those requirements;

§ 13550. [Aid to Needy Disabled]

Aid shall be granted under this chapter to any needy disabled person who comes within all of the following descriptions:

(b) Who resides in the state and has so resided for at least one year immediately preceding the date of application and for at least three years within the nine years immediately preceding the date of application, has become disabled while a resident of this state, or is eligible under the terms of a reciprocal agreement entered into by the department with another state.

§ 17104. State residence. A resident of the State of California is a person who comes within all the following descriptions:

(a) Who has lived continuously in the state for a period of three years with the intent to make it his home; but time spent in a public institution or on parole therefrom shall not be counted in determining the matter of residence in this or another state.

(b) Who has not lost his residence by remaining away from this state for an uninterrupted period of one year. Absence from the state for labor or other special or temporary purpose does not occasion loss of residence.

42 U.S.C. § 302. State old-age and medical assistance plans.

* * *

(b) Approval by Secretary.

The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for assistance under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which (A) in the case of applicants for old-age assistance, excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age

assistance and has resided therein continuously for one year immediately preceding the application, and (B) in the case of applicants for medical assistance for the aged, excludes any individual who resides in the State; or

(3) any citizenship requirement which excludes any citizen of the United States.

42 U.S.C. § 602. State plans for aid and services to needy families with children; contents; approval by Secretary.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes as a condition of eligibility for aid to families with dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the State for one year immediately preceding the birth.

42 U.S.C. § 1202. State plans for aid to blind.

* * *

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the blind under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or

(2) Any citizenship requirement which excludes any citizen of the United States.

42 U.S.C. § 1352. State plans for aid to the permanently and totally disabled.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the permanently and totally disabled under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid to the permanently and totally disabled and has resided therein continuously for one year immediately preceding the application;

(2) Any citizenship requirement which excludes any citizen of the United States.

SUPREME COURT OF THE UNITED STATES

October Term, 1968.

MONTGOMERY ET AL. *v.* BURNS ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

No. 438. Decided May 5, 1969.

PER CURIAM.

The motion of appellees for leave to proceed *in forma pauperis* is granted. The motion to affirm is granted and the judgment is affirmed.

MR. JUSTICE BLACK dissents for the reasons given in the dissenting opinion of THE CHIEF JUSTICE in *Shapiro* v. *Thompson*, 394 U. S. —, decided April 21, 1969.

MR. JUSTICE HARLAN dissents for the reasons given in his dissenting opinion in *Shapiro* v. *Thompson*, 394 U. S. —.